



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 9732760

Date: AUG. 10, 2020

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a musician and music producer, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that record did not establish that the Petitioner has received a major, internationally recognized award or that he meets at least three of the ten alternate evidentiary criteria for this classification.

On appeal, the Petitioner contends that he meets four of the evidentiary criteria and otherwise qualifies for the benefit sought.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will sustain the appeal.

I. LAW

Section 203(b)(1) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term “extraordinary ability” refers only to those individuals in “that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011). This two-step analysis is consistent with our holding that the “truth is to be determined not by the quantity of evidence alone but by its quality,” as well as the principle that we examine “each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.” *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

The Petitioner is a musician, music producer and former record company executive who intends to continue working as a producer, recording artist, and touring musician in the United States.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). In denying the petition, the Director found that the Petitioner claimed, but did not meet, the criteria for awards, published material, judging, display in artistic showcases or exhibitions, and leading or critical role under 8 C.F.R. § 204.5(h)(3)(i), (iii), (iv), (vii), and (viii), respectively.¹

On appeal, the Petitioner asserts that he meets up to four criteria and that he qualifies as an individual of extraordinary ability. We have reviewed all the evidence in the record of proceedings, and we find that the Petitioner has sufficiently demonstrated that he meets at least three criteria.

In determining that the Petitioner did not satisfy the published materials criterion at 8 C.F.R. § 204.5(h)(3)(viii), the Director generally stated that the Petitioner submitted: “internet ads” and “material posted in web portals or other social media,” and “a multitude of online articles,” that are

¹ We note that the Petitioner did not claim to meet the criterion related to receipt of lesser nationally or internationally recognized awards or prizes at 8 C.F.R. § 204.5(h)(3)(i).

considered “posting not published material.” Out of the dozens of media articles submitted, the Director specifically referenced only four of them, two of which were not submitted under this criterion. While not every submitted article meets this criterion, the record contains articles about the Petitioner and relating to his work which were published by major newspapers including *The New York Times* and *Los Angeles Times* and industry publications such as *Billboard* and *Rolling Stone*.

With respect to the judging criterion at 8 C.F.R. § 204.5(h)(3)(iv), the Director acknowledged that the Petitioner submitted evidence related to the [redacted] short film competition, but found insufficient documentation to establish that he actually participated as a judge in the event, that he judged the work of others in his field, or that his judging activities were at a level “consistent with sustained national or international acclaim.” However, the evidence submitted clearly establishes the Petitioner’s participation on a three-person panel of jurors in the [redacted] category at the 2008 [redacted] festival. This evidence confirms that the jurors were responsible for selecting a category winner, and that short films submitted in the [redacted] category are music videos and therefore within the Petitioner’s field of expertise. The Petitioner does not need to establish that his judging activities are a level “consistent with national or international acclaim” in order to satisfy the plain language of this criterion.

The Director determined that the Petitioner did not meet the criterion relating to the display of his work at artistic exhibitions or showcases at 8 C.F.R. § 204.5(h)(3)(vi) based on a finding that the criterion is intended for visual artists, not performing artists. We disagree with the Director’s interpretation that the plain language of the regulation renders this criterion applicable only to visual artists. The regulation requires only that the work displayed be a given petitioner’s own work product and that the venues at which the individual’s work was displayed be artistic exhibitions or showcases. 8 C.F.R. § 204.5(h)(3)(vii).² As certain exhibitions or showcases featuring performing artists meet the plain language of this regulation, the Director should not have summarily disregarded the Petitioner’s evidence. Here, for example, the Petitioner provided evidence that he and his bands have performed for audiences at many music festivals. Accordingly, we conclude that the submitted evidence satisfies the plain language of this criterion.

As the Petitioner meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3), he has satisfied the initial evidentiary requirements for this classification. We will evaluate the totality of the evidence, including the documentation relating to the other criterion he has claimed, in the context of the final merits determination below.

B. Final Merits Determination

In a final merits determination, we evaluate whether the Petitioner has demonstrated, by a preponderance of the evidence, that he has sustained national or international acclaim and that his achievements have been recognized in the field through extensive documentation, making him one of the small percentage who have risen to the very top of the field of endeavor. See section

² See also USCIS Policy Memorandum PM 602-0005.1, Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator’s Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 13 (Dec. 22, 2010), <https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/i-140-evidence-pm-6002-005-1.pdf>. (stating that officers should use the common dictionary definitions of “exhibition” and “showcase” in evaluating this criterion).

203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20.³ When considered in the aggregate with the evidence discussed below, the Petitioner has demonstrated that his achievements are reflective of a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

The record reflects that the Petitioner began his career in the music industry as a teenager, when he worked as a radio disc jockey before joining [redacted] as a radio promoter right after leaving high school. At [redacted] he advanced to the positions of label manager, general manager and head of artists and repertoire (A&R) and later, from 2008 until 2011, served as [redacted]’s chairman. A 2006 profile of the Petitioner published by the *Los Angeles Times* noted that, “[the Petitioner] at 30, is the first of his generation in Mexico to assume control of a major record label” and “part of a small but growing group of people who are coming into power in Mexico with new ways to look at the market and the music.” The article goes on to note that “[d]uring his tenure, the label leaped from fifth to second place in the market” in large part due to the success of artists that the Petitioner signed and helped to develop. The Petitioner also provided evidence that *Billboard* magazine, a major trade publication in the music industry, consistently reported on his career at [redacted]

He achieved an early milestone in his career when he served as the musical coordinator for [redacted] [redacted]’s award-winning film [redacted]. The Petitioner’s work on this project earned him a Grammy award nomination for [redacted] [redacted] at the [redacted] Grammy Awards in 2002.

While he was still working as an executive at [redacted] the Petitioner also began recording and performing under the pseudonym [redacted] in 2005. This [redacted] Mexican music industry” is discussed in the above-referenced *Los Angeles Times* article [redacted] [redacted] and in a 2009 profile published by *The New York Times* [redacted] [redacted]. The latter article, which previewed the Petitioner’s performance at the [redacted] Music & Arts Festival, notes that he remained the chairman of [redacted] while carving out [redacted] with “a “quirky but infectious blend of [redacted] sounds.” The article identifies [redacted] as “one of America’s premier music events, drawing around 150,000 people,” and mentions that it is known for “packing its lineups with a few historic reunions” and “buzzy bands [redacted].”

As [redacted] the Petitioner has released five albums between 2006 and 2017, and the record reflects that he has consistently received significant media coverage and critical acclaim. In its review of the Petitioner’s second album, [redacted] the BBC noted that he was “already receiving acclaim on the other side of the Atlantic, with the *New York Times* and *Rolling Stone Mexico* both recognizing the importance of this album [redacted]. In addition to [redacted], the Petitioner has toured extensively in North and South America performing at acclaimed festivals and venues such as [redacted] [redacted] [redacted] and [redacted] Folk Festival, and has received similar critical acclaim for his live performances from the *Los Angeles Times* and

³ *See also* USCIS Policy Memorandum PM 602-0005.1, *supra* at 4 (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established by a preponderance of the evidence the required high level of expertise of the immigrant classification).

other major market media. He was also invited to create official remixes for artists such as [REDACTED], [REDACTED], and [REDACTED], had his songs featured in advertising campaigns for major brands [REDACTED], [REDACTED], in many acclaimed television shows and films (including HBO's [REDACTED], Showtime's [REDACTED], ABC's [REDACTED], and New Line Cinemas' [REDACTED]) and video games (EA Sports [REDACTED] series and Rockstar Games [REDACTED]).

For [REDACTED] which the record reflects is among the best-selling video games of all time, he was one of 15 artists invited to curate and host an in-game radio station. In 2013, *Rolling Stone* published an interview with the game's soundtrack supervisor, who explains that the game sought to capture the [REDACTED]. He mentions that the Petitioner, based on his work as [REDACTED] was chosen to curate the Latin station [REDACTED], which includes the Petitioner's song [REDACTED]. Other station hosts included well known musicians, actors, and DJs.

More recently, the Petitioner was hired by [REDACTED] to serve as the musical consultant for its 2017 release, [REDACTED] which has earned box office receipts of over \$800 million. The Petitioner submitted articles from *Rolling Stone Mexico* and other sources which report on his addition to [REDACTED]'s musical staff for the film, noting that he was brought on "to capture the authentic flavor of Mexico's music." Several other articles mention the importance of music in the film and the Petitioner's involvement in achieving the desired authentic representation of Mexican music. The record reflects that the [REDACTED] song [REDACTED] is on [REDACTED] official soundtrack and an animated version of the Petitioner appears in the movie in the scene that features his song.

In addition to his success and high-profile projects as [REDACTED] the Petitioner has received international recognition for his 2016 album [REDACTED] (a collaborative project with fellow Mexican musician and producer [REDACTED]), and his band [REDACTED], which he founded in 2015, collaborating with [REDACTED] of [REDACTED] and [REDACTED]. The record reflects that the recording of [REDACTED] which took place in seven cities with many prominent guest artists, was featured in *Los Angeles Times*, the *Chicago Tribune*, *Rolling Stone*, *Billboard* and many Mexican publications and was the subject of a [REDACTED] documentary series. An article about [REDACTED] featured on the website of artist rights organization BMI (bmi.com) refers to the Petitioner and [REDACTED] as "[REDACTED]" noting that they "[REDACTED]". [REDACTED] The Petitioner's [REDACTED] tour played at the [REDACTED] Music Festival and in international locations in 2015.

In addition, [REDACTED]'s album, [REDACTED] was featured as the number two album on *Rolling Stone*'s "10 Best [REDACTED] of 2016" and the record reflects that the Petitioner garnered international media recognition and critical praise for both the album and the band's tours of the United States, the United Kingdom and Australia. An exclusive premiere of a video for the [REDACTED] single [REDACTED] published by U.K. newspaper *The Guardian* (theguardian.com) refers to the band as "[REDACTED]" and *Billboard* published an article previewing [REDACTED]'s 2015 [REDACTED] tour and featured an exclusive premiere of its album. Additional interviews and press for [REDACTED]'s album and live performances appeared in the *Los Angeles Times*, *Rolling Stone*, *NPR Music*, *The Sydney Morning Herald*, *The Economist*, *The Village Voice*, the *New Yorker*, and *Univision*.

In 2019, the Petitioner produced the album [redacted] for Grammy-winning Mexican American artist [redacted] and [redacted] for Latin Grammy-winning band [redacted] whose tracks include collaborations with [redacted] and [redacted]. Both albums were featured in articles by *Rolling Stone* and *NPR* which mention the Petitioner's production role and his other projects. The Petitioner has also detailed his upcoming plans to perform in a traveling music show based on [redacted] to curate and provide music for the Netflix series [redacted] to record a new [redacted] album and tour the United States, and to produce and remix music for other acclaimed artists.

Based on the evidence of the Petitioner's achievements and earned recognition discussed above, the Petitioner has demonstrated his extraordinary ability as a musician and producer and established that he is regarded as having a "career of acclaimed work in the field." *See* H. Rep. No. 101-723, at 59 (Sept. 19, 1990). The totality of the evidence establishes that he possesses a level of expertise that is consistent with a finding that he is one of a small percentage at the very top of the field of endeavor and that he has documented sustained acclaim. *See* section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *Kazarian*, 596 F.3d at 1119-20.

III. CONCLUSION

The Petitioner has established that he meets at least three of the evidentiary criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). He has also demonstrated sustained national and international acclaim and that his achievements have been recognized through extensive documentation. Lastly, the Petitioner has shown that he intends to continue working in his area of expertise and that he will substantially benefit prospectively the United States. He therefore qualifies for classification as an individual of extraordinary ability.

ORDER: The appeal is sustained.